

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:LM: [REDACTED]:TL-N-2489-01
[REDACTED]

date: April 18, 2001

to: Internal Revenue Service
Large and Mid-Size Business Division

MS: [REDACTED]

Attn: [REDACTED], Team Coordinator

from: Large and Mid-Size Business Division Counsel - [REDACTED]

subject: The Effect of Bankruptcy Upon the Agency of the Corporate Parent With
Respect to Its Bankrupt Subsidiary

Taxpayer: [REDACTED]

E.I.N.: [REDACTED]

Type of Tax: Income

Years: [REDACTED], [REDACTED], [REDACTED] and [REDACTED]

U.I.L. #: 1502.00-00
1502.77-00
6501.08-00
7121.00-00

DISCLOSURE STATEMENT

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views. This memorandum responds to your request for assistance dated April 10, 2001. This memorandum should not be cited as precedent.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

10134

This advice relies on facts provided by you to our office. If you find that any facts are incorrect, please advise us immediately so that we may modify and correct this advice. We have informally discussed this issue with Bryan Camp (CC:PA:CBS:B2), Alfred Bishop (CC:CORP:B6) and George Johnson (CC:CORP:B6) who have tentatively agreed with our analysis in this matter. However, this advice is subject to 10-day post review by the National Office. CCDM 35.3.19.4. Accordingly, we request that you do not act on this advice until we have advised you of the National Office's comments, if any, concerning this advice.

FACTS

This is a non-docketed case involving a Coordinated Examination Program (CEP) taxpayer. [REDACTED], EIN: [REDACTED] (" [REDACTED]" or "Taxpayer") is a public utility primarily regulated by the [REDACTED] and engaged principally in the business of providing electric and natural gas services throughout most of [REDACTED]. [REDACTED] was incorporated in the state of [REDACTED] in [REDACTED]. Effective [REDACTED], [REDACTED] became subsidiaries of [REDACTED]. [REDACTED], EIN: [REDACTED], is a holding company based in [REDACTED]. Incorporated in the state of [REDACTED] in [REDACTED], [REDACTED] markets energy services throughout [REDACTED]. For the taxable years [REDACTED] through [REDACTED], [REDACTED] was a member of the [REDACTED] affiliated group which filed a consolidated return. The consolidated income tax returns filed by [REDACTED] for calendar years [REDACTED], [REDACTED], [REDACTED] and [REDACTED] are currently under examination.

With respect to certain issues under examination related to taxable years [REDACTED] and [REDACTED], the Service and Taxpayer have reached a tentative basis of agreement. In an attempt to reach final resolution of these issues, the Service drafted closing agreements setting forth the parties to the agreement as follows:

Under Section 7121 of the Internal Revenue Code,

[REDACTED]
Employer Identification Number: [REDACTED]
[REDACTED]

referred to as "taxpayer", and the Commissioner of Internal Revenue make the following closing agreement in triplicate:

On , filed for bankruptcy protection under Chapter 11 of the United States Bankruptcy Code in the Division of the United States Bankruptcy Court for the .

ISSUES

1. Where , a subsidiary of , has filed for bankruptcy protection under Chapter 11, who is the proper party to sign Form 872 with respect to the income tax liability for the consolidated returns filed in years , , and ?

2. Where , a subsidiary of , has filed for bankruptcy protection under Chapter 11, who is the proper party to sign closing agreements with respect to the income tax liability for the consolidated returns filed in years , , and ?

3. Where , a subsidiary of , has filed for bankruptcy protection under Chapter 11, who is the proper party for the Service to issue a notice of deficiency with respect to the income tax liability for the consolidated returns filed in years , , and ?

CONCLUSION

1. is the proper entity to execute Form 872 as the sole agent for each subsidiary in the group, including bankrupt subsidiary , with respect to the income tax liability for the consolidated returns filed in years , , and .

2. is the proper entity to execute closing agreements as the sole agent for each subsidiary in the group, including bankrupt subsidiary . As such, the closing agreement executed by shall be considered as having also been given or executed by bankrupt subsidiary with respect to the income tax liability for the consolidated returns filed in years , , and .

3. The Service should issue a notice of deficiency to , the common parent, as agent for the group. Generally, the common parent shall be the sole agent for each subsidiary in the consolidated group. Treas. Reg. § 1.1502-

77(a). Pursuant to this general rule, the parent is the proper party to receive a notice of deficiency. However, the notice of deficiency must name each corporation which was a member of the group during any part of each period for which a notice is issued.

ANALYSIS

Pursuant to the consolidated return regulations, the common parent is the sole agent for each member of the group, duly authorized to act in its own name in all matters relating to the income tax liability for the consolidated return year. Treas. Reg. § 1.1502-77(a). The regulations provide that the common parent, for almost all purposes, shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year. Moreover, the regulations proscribe subsidiaries from possessing any authority "to act for or to represent itself in any such matter." Treas. Reg. § 1.1502-77(a).

There is no provision in the Bankruptcy Code which would affect the agency of a parent with respect to the consolidated group even where a subsidiary is in bankruptcy. Therefore, with respect to all three issues addressed in this advice, we look to Treas. Reg. § 1.1502-77(a) for guidance.

Issue 1: Pursuant to the consolidated return regulations, the common parent in its name will give waivers and any waiver so given shall be considered as having been given or executed by each such subsidiary. Id. Unless there is an agreement to the contrary, an agreement entered into by the common parent extending the time within which an assessment of income tax may be made for the consolidated return year shall be applicable to each corporation which was a member of the group during any part of such taxable year. Treas. Reg. § 1.1502-77(c). The common parent remains the agent for the members of the group for any year during which it was the common parent, whether or not consolidated returns are filed in subsequent years. Treas. Reg. § 1.1502-77(a). Thus, [REDACTED] is the proper entity to execute Form 872 with respect to the income tax liability for the consolidated returns filed in years [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

Under I.R.C. § 6501(c)(4), a taxpayer and the Internal Revenue Service may consent in writing to extensions of the time for making assessments. The regulations under section 6501(c)(4) do not specify who may sign consents executed under that section. Accordingly, the Service will generally apply the rules applicable to execution of the original returns to consents to the extension of time to make an assessment.

Section 6062 of the Code provides, generally, that a corporation's income tax returns must be signed by the president, vice-president, treasurer, assistant treasurer, chief accounting officer or any other officer duly authorized to act. The fact that an individual's name is signed on the return is prima facie evidence that the individual is authorized to sign the return. Accordingly, any such officer may sign a consent, whether or not that person was the same individual who signed the return.

Based on our analysis, we recommend:

- captioning the Form 872 as follows:

[REDACTED] (E.I.N.: [REDACTED]),
consolidated group*

- inserting language at the bottom page of the Form 872 as follows:

*This is with respect to the
consolidated return liability of [REDACTED]
[REDACTED] (E.I.N.: [REDACTED])
[REDACTED] for the taxable year ****.

- securing the signature of an authorized officer of [REDACTED]
[REDACTED] on the signature block on Form 872 and
noting on the signature block on page 2 of Form 872 as
follows:

[name of current officer]

[title of officer]

[REDACTED] (E.I.N.: [REDACTED])

- inputting the E.I.N. of [REDACTED] in the box on
the Form 872 labeled "SSN or EIN".
- confirming that [REDACTED] is still in existence
when the Form 872 is secured from this entity.

Additionally, at the time Form 872 is presented to the taxpayer for execution, please notify the taxpayer that it may (1) refuse to extend the period of limitations or (2) limit the extension to particular issues or to a particular period of time. I.R.C. § 6501(c)(4)(B). The statutory notice requirement under I.R.C. § 6501(c)(4)(B) generally applies to requests to extend the period of limitations made after [REDACTED].

Issue 2: Pursuant to the consolidated return regulations, the common parent in its name will execute closing agreements and any agreement so given shall be considered as having been given or executed by each such subsidiary. Treas. Reg. § 1.1502-77(a). With respect to the closing agreements, it may be advisable to present the executed documents for approval by the Bankruptcy Court. Therefore, please forward a copy of all closing agreements to [REDACTED], an attorney in our office, as soon as these documents are executed by [REDACTED] and the Service.

Issue 3: Pursuant to the consolidated return regulations, notices of deficiencies will be mailed only to the common parent, and the mailing to the common parent shall be considered as a mailing to each subsidiary in the group. Treas. Reg. § 1.1502-77(a). However, please note that any notice of deficiency, in respect of the tax for a consolidated return year, must name each corporation which was a member of the group during any part of such period.

Should you have any questions, please contact attorney [REDACTED] ext. 144.

[REDACTED]
Area Counsel

By: [REDACTED] /s/ [REDACTED]
Attorney (LMSB)

cc: Assistant Chief Counsel
Office of Chief Counsel
Internal Revenue Service
Room 4510
1111 Constitution Avenue NW
Washington, DC 20224
(via e-mail to TSS4510)

cc: [REDACTED]
(by hand)